

FIRST REGULAR SESSION

SENATE BILL NO. 120

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0441S.01I

AN ACT

To repeal sections 36.390, 106.010, 168.116, and 168.118, RSMo, and to enact in lieu thereof thirteen new sections relating to public employee due process.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 36.390, 106.010, 168.116, and 168.118, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 36.390, 105.1250, 105.1252, 105.1254, 105.1256, 105.1258, 105.1260, 105.1262, 105.1264, 105.1266, 106.010, 168.116, and 168.118, to read as follows:

36.390. 1. An applicant whose request for admission to any examination has been rejected by the director may appeal to the board in writing within fifteen days of the mailing of the notice of rejection by the director, and in any event before the holding of the examination. The board's decision on all matters of fact shall be final.

2. Applicants may be admitted to an examination pending a consideration of the appeal, but such admission shall not constitute the assurance of a passing grade in education and experience.

3. Any applicant who has taken an examination and who feels that he or she has not been dealt with fairly in any phase of the examination process may request that the director review his or her case. Such request for review of any examination shall be filed in writing with the director within thirty days after the date on which notification of the results of the examination was mailed to the applicant. A candidate may appeal the decision of the director in writing to the board. This appeal shall be filed with the board within thirty days after date on

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

which notification of the decision of the director was mailed to the applicant. The board's decision with respect to any changes shall be final, and shall be entered in the minutes. A correction in the rating shall not affect a certification or appointment which may have already been made from the register.

4. An eligible whose name has been removed from a register for any of the reasons specified in section 36.180 or in section 36.240 may appeal to the board for reconsideration. Such appeal shall be filed in writing at the office of the director within thirty days after the date on which notification was mailed to the board. The board, after investigation, shall make its decision which shall be recorded in the minutes and the eligible shall be notified accordingly by the director.

5. Any regular employee who is dismissed or involuntarily demoted for cause or suspended for more than five working days may appeal in writing to the board within thirty days after the effective date thereof, setting forth in substance the employee's reasons for claiming that the dismissal, suspension or demotion was for political, religious, or racial reasons, or not for the good of the service. Upon such appeal, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard and to present evidence at a hearing which, at the request of the appealing employee, shall be public. At the hearing of such appeals, technical rules of evidence shall not apply. After the hearing and consideration of the evidence for and against a suspension or demotion, the board shall approve or disapprove such action and in the event of a disapproval the board shall order the reinstatement of the employee to the employee's former position and the payment to the employee of such salary as the employee has lost by reason of such suspension or demotion. After the hearing and consideration of the evidence for and against a dismissal, the board shall approve or disapprove such action and may make any one of the following appropriate orders:

(1) Order the reinstatement of the employee to the employee's former position and the payment to the employee of part or all of such salary as has been lost by reason of such dismissal;

(2) Sustain the dismissal of such employee, unless the board finds that the dismissal was based upon political, social, or religious reason, in which case it shall order the reinstatement of the employee to the employee's former position and the payment to the employee of such salary as has been lost by reason of such dismissal;

(3) Except as provided in subdivisions (1) and (2) of this subsection, the board may sustain the dismissal, but may order the director to recognize reemployment rights for the dismissed employee pursuant to section 36.240, in an appropriate class or classes, or may take steps to effect the transfer of such employee to an appropriate position in the same or another division of service.

6. The board shall establish such rules as may be necessary to give effect to the provisions of this section. The rules may provide that the board or the chairman of the board may delegate responsibility for the conduct of investigations and the hearing of appeals provided pursuant to any section of this chapter to a member of the board or to a hearing officer designated by the board. Such hearing officer shall have the power to administer oaths, subpoena witnesses, compel the production of records pertinent to any hearing, and take any action in connection with such hearing which the board itself is authorized to take by law other than making the final decision and appropriate order. When the hearing has been completed, the individual board member or the hearing officer who conducted the hearing shall prepare a summary thereof and recommend a findings of fact, conclusions of law, decision and appropriate order for approval of the board. The board may adopt such recommendations in whole or in part, require the production of additional testimony, reassign the case for rehearing, or may itself conduct such new or additional hearing as is deemed necessary prior to rendering a final decision. The board may also establish rules which provide for alternative means of resolving one or more of the types of appeals outlined in this section.

7. The provisions for appeals provided in subsection 5 of this section for dismissals of regular merit employees may be adopted by nonmerit agencies of the state for any or all employees of such agencies.

8. Agencies not adopting the provisions for appeals provided in subsection 5 of this section shall adopt dismissal procedures substantially similar to those provided for merit employees. However, these procedures need not apply to employees in policy-making positions, or to members of military or law enforcement agencies.

9. The hearing shall be deemed to be a contested case and the procedures applicable to the processing of such hearings and determinations shall be those established by chapter 536, RSMo. Decisions of the personnel advisory board shall be final and binding subject to appeal by either party. Final decisions of the personnel advisory board pursuant to this subsection shall be subject to review

on the record by the circuit court pursuant to chapter 536, RSMo.

10. Employees who have a right to appeal a dismissal or demotion pursuant to this section, and those employees in policymaking positions who do not have a right to appeal under this section, shall not have the right to appeal that dismissal or demotion pursuant to sections 105.1250 to 105.1266, RSMo.

105.1250. Sections 105.1250 to 105.1266 may be cited as the "Public Employee Due Process Act".

105.1252. For purposes of sections 105.1250 to 105.1266, the following words and phrases mean:

(1) "Employee", a person employed by the public body for a period of at least ninety consecutive calendar days, who is not a supervisor, manager, or superintendent of a school district;

(2) "Hearing officer", a person who has the experience and qualifications required by the state board of mediation to be on the list of hearing officers maintained by the board, and whose fee shall not exceed five hundred dollars per day, plus reimbursement for any transportation and other expenses related to the hearing;

(3) "Public body", the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state.

105.1254. 1. When a public body intends to terminate, discipline, or demote an employee, including when it intends to terminate an employment contract, it shall serve written charges upon the employee that shall specify with particularity the grounds for the proposed action. The written charges shall include notice to the employee that the matter may be heard by a hearing officer if requested by the employee. The written charges and notice of the right to request a hearing shall be served in person on the employee, or by certified mail addressed to the employee at the employee's last known address.

2. If a hearing is requested by the employee or scheduled by the public body, the hearing shall take place not less than sixty days after the charges and notice have been served on the employee, or at a time mutually agreed to by the employee and the public body.

3. Any other provision of the law to the contrary notwithstanding, a public body shall not charge an employee subject to sections 105.1250

to 105.1266 with incompetence, inefficiency, or insubordination in the line of duty, except after the public body has provided the employee with a written remediation plan of at least four months duration stating specifically the causes that, if not removed, may result in termination, discipline, or demotion.

105.1256. 1. The party seeking the hearing shall submit a written request to the state board of mediation for a list of seven names from the list of hearing officers maintained by the board. A copy of the request shall be served on the other party. The board shall furnish a copy of the list of seven names to each party, including a resume of qualifications for each name on the list. No person on the list of seven names shall be an employee of the public body nor reside in its jurisdiction, except when the jurisdiction is the state.

2. Within seven days of the receipt of the list of seven names, the parties shall select a hearing officer from the list by alternately striking a name from the list until one name remains. The public body shall strike a name from the list first. The parties shall notify the board of the name of the hearing officer selected. The parties shall contact the selected hearing officer to schedule the hearing.

105.1258. 1. Prior to the hearing, each party shall provide the other with the name, address, and telephone number of each witness it intends to call at the hearing. The public body shall provide to the employee, prior to the hearing, copies of all statements, memorandums, recordings, videotapes, computer files, affidavits, and other documents upon which it based its charges. The hearing officer shall issue subpoenas for the taking of depositions prior to the hearing for the purpose of discovery or the preservation of testimony.

2. The state board of mediation shall adopt rules for discovery by the parties, which shall include the provisions of subsection 1 of this section.

105.1260. 1. The hearing shall be open to the public unless closed at the request of the employee.

2. The employee and the public body shall have the right to be represented by counsel or by representatives who are not attorneys. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses on any

matter relevant to the matters at issue in the hearing even if the matter was not the subject of direct examination, to impeach any witness regardless of which party first called the witness, and to rebut the evidence against it.

3. A stenographer or court reporter shall be present at the hearing and shall make a full record of the proceedings of the hearing and shall, within ten days after the conclusion of the hearing or such other time mutually agreed to by the parties, furnish the hearing officer and each party with a copy of the transcript of the record, which shall be certified by the stenographer or court reporter to be complete and correct. The transcript shall not be open to public inspection unless the hearing was open to the public, or unless an appeal of the decision of the hearing officer is taken by the employee or the public body.

4. The public body shall pay the cost of the transcript of the record, including the copy for the hearing officer and the copy for the employee, and shall also pay the per diem fees and expenses of the hearing officer. Except as otherwise provided in this section, each party shall be responsible for its own expenses, including attorney fees, costs associated with depositions and subpoenas, witness fees, and other costs associated with the case.

5. The hearing officer shall:

- (1) Administer oaths;
- (2) Issue subpoenas for the attendance and testimony of witnesses and the production of books, papers, and documents relating to any matter under investigation;
- (3) Authorize depositions to be taken;
- (4) Receive evidence, rule on objections and limit lines of questioning and testimony that are repetitive, cumulative, or irrelevant;
- (5) Regulate the course of the hearing and dispose of procedural requests, motions, and similar matters;
- (6) Take any other action necessary to make the hearing accord with administrative due process; and
- (7) Authorize the filing of posthearing briefs or proposed findings of fact and conclusions of law by each party.

6. The state board of mediation shall promulgate rules for the conduct of the hearing and matters related directly to hearings

conducted pursuant to sections 105.1250 to 105.1266.

105.1262. 1. The hearing officer shall issue a decision, including findings of fact and conclusions of law, within thirty days after the filing of posthearing briefs or proposed findings of fact and conclusions of law by the parties. The hearing officer shall send a copy of the decision to each of the parties.

2. The decision of the hearing officer shall be based on the doctrine of just cause, and the public body shall have the burden of proving that there is just cause to terminate, discipline, or demote the employee or to terminate the employment contract of the employee.

3. The decision of the hearing officer shall be final, unless one of the parties seeks a review of the decision, which shall be conducted pursuant to sections 536.100 to 536.140, RSMo.

105.1264. No rule or portion of a rule promulgated pursuant to sections 105.1250 to 105.1266 shall take effect unless it has been promulgated pursuant to chapter 536, RSMo.

105.1266. To the extent of any conflict between the provisions of sections 105.1250 to 105.1266 and any other law, the particular provisions of sections 105.1250 to 105.1266 in conflict which cannot be harmonized with any other law shall prevail over general provisions in any other law, and where those particular provisions of sections 105.1250 to 105.1266 are in conflict with the particular provisions in any other law, the law later enacted shall prevail.

106.010. 1. The governor [shall have power and he is hereby authorized to] **may** remove from office, without assigning any other reason therefor, any appointive state official required by law to be appointed by the governor, whenever in his opinion such removal is necessary for the betterment of the public service, but the governor may, at his **or her** discretion, in any order of removal which [he] **the governor** may make under [authority of] this section, assign additional and more specific reasons for such removal.

2. **Appointive state officials required by law to be appointed by the governor shall not have the right to appeal their removal from office pursuant to sections 105.1250 to 105.1266, RSMo.**

168.116. 1. The indefinite contract of a permanent teacher may not be terminated by the board of education until after service upon the teacher of written charges specifying with particularity the grounds alleged to exist for

termination of such contract, notice of **the teacher's right to** a hearing on charges **as provided in this section and in sections 168.118 and 168.120, and of the teacher's right to request a hearing pursuant to sections 105.1250 to 105.1266, RSMo,** and a hearing by the board of education on charges if requested by the teacher **or a hearing pursuant to sections 105.1250 to 105.1266, RSMo, if requested by the teacher.**

2. At least thirty days before service of notice of charges of incompetency, inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or the superintendent of schools warning in writing, stating specifically the causes which, if not removed, may result in charges. Thereafter, both the superintendent, or **[his] the superintendent's** designated representative, and the teacher shall meet and confer in an effort to resolve the matter.

3. Notice of **the teacher's right to** a hearing upon charges, together with a copy of charges, shall be served on the permanent teacher at least twenty days prior to the date **[of] set by the board of education for** the hearing, **except when the teacher elects to request a hearing pursuant to sections 105.1250 to 105.1266, RSMo, in which case the provisions of sections 105.1250 to 105.1266 shall apply.** The notice and copy of the charges may be served upon the teacher by certified mail with personal delivery addressed to **[him] the teacher** at **[his] the teacher's** last known address. If the teacher or **[his] the teacher's** agent does not within ten days after receipt of the notice request a hearing on the charges, the board of education may, by a majority vote, order the contract of the teacher terminated. If a hearing is requested by either the teacher or the board of education, it shall take place not less than twenty nor more than thirty days after notice of a hearing has been furnished the permanent teacher.

4. On the filing of charges in accordance with this section **and with sections 105.1250 to 105.1266, RSMo,** the board of education may suspend the teacher from active performance of duty until a decision is rendered by the board of education but the teacher's salary shall be continued during such suspension. If a decision to terminate a teacher's employment by the board of education is appealed, and the decision is reversed, the teacher shall be paid **[his] the teacher's** salary lost during the pending of the appeal.

168.118. If a hearing is requested on the termination of an indefinite contract it shall be conducted **pursuant to sections 105.1250 to 105.1266,**

RSMo, if the teacher requests a hearing pursuant to sections 105.1250 to 105.1266, RSMo. If a teacher requests a hearing before the board of education, then the hearing shall be conducted by the board of education in accordance with the following provisions:

- (1) The hearing shall be public;
- (2) Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses;
- (3) Testimony at hearings shall be on oath or affirmation administered by the president of the board of education, who for the purpose of hearings held under sections 168.102 to 168.130 shall have the authority to administer oaths;
- (4) The school board shall have the power to subpoena witnesses and documentary evidence as provided in section 536.077, RSMo, and shall do so on its own motion or at the request of the teacher against whom charges have been made. The school board shall hear testimony of all witnesses named by the teacher; however, the school board may limit the number of witnesses to be subpoenaed on behalf of the teacher to not more than ten;
- (5) The board of education shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within ten days after the conclusion thereof, furnish the board of education and the teacher, at no cost to the teacher, with a copy of the transcript of the record, which shall be certified by the stenographer to be complete and correct. The transcript shall not be open to public inspection, unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the board is taken by the teacher;
- (6) All costs of the hearing shall be paid by the school board except the cost of counsel for the teacher;
- (7) The decision of the board of education resulting in the demotion of a permanent teacher or the termination of an indefinite contract shall be by a majority vote of the members of the board of education and the decision shall be made within seven days after the transcript is furnished them. A written copy of the decision shall be furnished the teacher within three days thereafter.